

AMENDED IN ASSEMBLY APRIL 20, 1998

AMENDED IN ASSEMBLY APRIL 13, 1998

AMENDED IN ASSEMBLY APRIL 2, 1998

CALIFORNIA LEGISLATURE—1997–98 REGULAR SESSION

ASSEMBLY BILL

No. 1716

**Introduced by Assembly Member Murray
(Coauthor: Assembly Member Strom-Martin)**

January 29, 1998

An act to add Article 10.5 (commencing with Section 6175) to the Business and Professions Code, ~~and to amend Section 785 of the Insurance Code~~, relating to the provision of financial services.

LEGISLATIVE COUNSEL'S DIGEST

AB 1716, as amended, Murray. Lawyers: financial services.

Existing law regulating the practice of law establishes that properly adopted rules of professional conduct are binding upon all members of the State Bar. These rules provide that lawyers may enter into business transactions with their clients or acquire pecuniary interests adverse to their clients if certain prerequisites, including the client's informed written consent, are met.

This bill would prohibit any lawyer from ~~providing~~ *selling* financial services to any person with whom the lawyer has or has had an attorney-client relationship.

This bill would provide that an injured party may sue for civil damages and other civil remedies. This bill would

provide that any client who is an elder or dependent adult may recover an additional award if certain specified conditions are met. This bill would also provide that a violation of this prohibition shall be cause for discipline by the State Bar.

~~Existing law regulating the practice of insurance provides that all insurers, brokers, agents, and others engaged in the transaction of insurance owe a prospective insured who is age 65 years or older a duty of honesty, good faith and fair dealing in addition to any other duty that may exist. Existing law further exempts specified types of insurance from this requirement.~~

~~This bill would require that all insurers, brokers, agents and others engaged in the transaction of insurance owe a fiduciary duty to a prospective insured who is age 65 years or older.~~

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Article 10.5 (commencing with Section
2 6175) is added to the Business and Professions Code, to
3 read:

4
5 Article 10.5. Provision of Financial Services by
6 Lawyers
7

8 6175. As used in this article, the following definitions
9 apply:

10 (a) "Member" means a member in good standing of
11 the State Bar and includes any agent of the member and
12 any law firm or law corporation doing business in the
13 State of California.

14 (b) "Lawyer" means a member of the State Bar or a
15 person who is admitted and in good standing and eligible
16 to practice before the bar of any United States court or
17 the highest court of the District of Columbia or any state,
18 territory, or insular possession of the United States, or
19 licensed to practice law in, or is admitted in good standing
20 and eligible to practice before the bar of the highest court
21 of, a foreign country or any political subdivision thereof,

1 and includes any agent of the lawyer or law firm or law
2 corporation doing business in the state.

3 (c) “Elder” means any person residing in California
4 who is 65 years of age or older.

5 (d) “Dependent adult” means any person residing in
6 California, who is between the ages of 18 and 64, who has
7 physical or mental limitations that restrict his or her
8 ability to carry out normal activities or to protect his or
9 her rights, including, but not limited to, persons who have
10 physical or developmental disabilities or whose physical
11 or mental abilities have diminished because of age.
12 “Dependent adult” includes any person between the
13 ages of 18 and 64 who is admitted as an in-patient to a
14 24-hour health care facility, as defined in Section 1250 of
15 the Health and Safety Code, including general acute care
16 hospitals, psychiatric hospitals, skilled nursing and
17 intermediate care facilities, and chemical dependency
18 recovery hospitals.

19 (e) “Financial services” means selling financial
20 products or having a compensated referral arrangement
21 with a financial services agent (such as an insurance
22 agent, mortgage broker, real estate broker, or securities
23 broker) who sells financial products.

24 (f) “Financial products” includes, but is not limited to:
25 (1) any type of interest in personal or real property; (2)
26 “securities” as defined by the federal Securities Act of
27 1933, the California Corporate Securities Law of 1968, or
28 their successors; (3) loans, mortgages, reverse mortgages,
29 and mortgage or loan participations; and (4) long-term
30 care insurance, life insurance, annuities and other
31 contracts governed by the Insurance Code or its
32 successors.

33 6175.3. A lawyer shall not ~~provide~~ *sell* financial
34 services to a person with whom the lawyer has or has had
35 an attorney-client relationship.

36 6175.4. (a) Any client who suffers any damage as the
37 result of a violation of this article by any lawyer may bring
38 an action against that lawyer to recover or obtain any of
39 the following remedies:

1 (1) Actual damages, but in no case shall the total award
2 of damages in a class action be less than five thousand
3 dollars (\$5,000).

4 (2) An order enjoining the violations.

5 (3) Restitution of property.

6 (4) Punitive damages.

7 (5) Any other relief that the court deems proper.

8 (b) Any client who is an elder or dependent adult may
9 seek and be awarded, in addition to the remedies
10 specified in subdivision (a), up to ten thousand dollars
11 (\$10,000) where the trier of fact (1) finds that the
12 consumer has suffered substantial physical, emotional, or
13 economic damage resulting from the defendant's
14 conduct, (2) makes an affirmative finding in regard to
15 one or more of the factors set forth in subdivision (b) of
16 Section 3345 of the Civil Code, and (3) finds that an
17 additional award is appropriate. Judgment in a class
18 action by elders or dependent adults may award each
19 class member the additional award where the trier of fact
20 has made the foregoing findings.

21 ~~(c) The court shall award court costs and attorney's~~
22 ~~fees to a prevailing plaintiff in litigation filed pursuant to~~
23 ~~this section. Reasonable attorney's fees may be awarded~~
24 ~~to a prevailing defendant upon a finding by the court that~~
25 ~~the plaintiff's prosecution of the action was not in good~~
26 ~~faith.~~

27 6175.5. A violation of this article by a member shall be
28 cause for discipline by the State Bar.

29 6175.7. The court shall report the name, address, and
30 professional license number of any person found in
31 violation of this article to the appropriate professional
32 licensing agencies for review and possible disciplinary
33 action.

34 6176. Nothing in this article shall be deemed to limit
35 or preclude enforcement of any other provision of law, or
36 of any court rule, or the State Bar Rules of Professional
37 Conduct.

38 ~~SEC. 2. Section 785 of the Insurance Code is amended~~
39 ~~to read:~~

1 ~~785. (a) All insurers, brokers, agents, and others~~
2 ~~engaged in the transaction of insurance are fiduciaries of,~~
3 ~~and owe a prospective insured who is age 65 years or older~~
4 ~~a duty of honesty, good faith, and fair dealing. This duty~~
5 ~~is in addition to any other duty, whether express or~~
6 ~~implied, that may exist.~~

7 ~~(b) Conduct of an insurer, broker, or agent, or other~~
8 ~~person engaged in the transaction of insurance, during~~
9 ~~the offer and sale of a policy or certificate previous to the~~
10 ~~purchase is relevant to any action alleging a breach of the~~
11 ~~duty of good faith and fair dealing.~~

12 ~~(c) Except for subdivisions (a) and (b) the~~
13 ~~requirements of this article shall not apply to any of the~~
14 ~~following:~~

15 ~~(1) Medicare supplement insurance as defined in~~
16 ~~subdivision (b) of Section 10192.1.~~

17 ~~(2) Long-term care insurance as defined in Section~~
18 ~~10231.2.~~

19 ~~(3) Disability coverage provided through the~~
20 ~~insured's employer or former employer.~~

21 ~~(4) Disability insurance policies or certificates~~
22 ~~principally designed to provide coverage for accidents or~~
23 ~~expenses incurred while traveling if the premium for the~~
24 ~~policy or certificate is ten dollars (\$10) or less.~~

25 ~~(5) Blanket disability insurance as defined in Section~~
26 ~~10270.3.~~

27 ~~(6) Credit disability insurance as defined in Section~~
28 ~~779.2.~~

29 ~~(7) Accidental death insurance.~~

30 ~~(8) Until January 1, 2001, disability policies or~~
31 ~~certificates that are sold through direct response methods~~
32 ~~of delivery.~~

33 ~~(9) Disability income insurance as defined in~~
34 ~~subdivision (i) of Section 799.01.~~

35 ~~(d) Provided that the requirements of Section 10296~~
36 ~~are met, this article shall not apply to transportation~~
37 ~~ticket policies and baggage insurance policy types~~

1 ~~allowable for sale by travel agents pursuant to Section~~
2 ~~1753.~~

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